

REMARKS

Claims 1-25, 50-75, and 80-82 are pending in the present application. Applicant respectfully requests reconsideration of the subject application in light of the remarks below. This is submitted in response to the Office Action dated December 24, 2008.

I. STATUS OF THE CLAIMS

In the Office Action, Claims 1, 4-23, 54-62, 67, 69-73, 50-53, 63-66, 74, 80-82 were rejected under 35 U.S.C. § 103(a) (hereinafter, “Section 103(a)”) as being unpatentable over newly cited UK Patent Application to MacNamee (GB 2372615, hereinafter, “MacNamee”), in view of newly cited International Application Publication to Anuszewski et al. (Pub. No. WO/2001/088809, hereinafter, “Anuszewski”).

Claim 2 was rejected under Section 103(a) as being unpatentable over MacNamee in view of Anuszewski and further in view of Kwan (U.S. Pub. US 2002/0147658, hereinafter, “Kwan”).

Claim 3 was rejected under Section 103(a) as being unpatentable over MacNamee in view of Anuszewski and Kwan and further in view of Glikman (U.S. Pub. 2001/0037254, hereinafter, “Glikman”).

Claims 24-25, 68, and 75 are rejected under Section 103(a) as being unpatentable MacNamee in view of Anuszewski and further in view of Glikman and further in view of Official Notice.

Applicant respectfully traverses all rejections and requests reconsideration for all of the pending claims for at least the reasons discussed below.

A. REJECTION OF CLAIMS UNDER SECTION 103(a), MACNAMEE & ANUSZEWSKI

Claims 1, 4-23, 54-62, 67, 69-73, 50-53, 63-66, 74, 80-82 were rejected under Section 103(a) as being unpatentable over MacNamee in view of Anuszewski. Claims 1, 6, 18, 50, 54, 64, 69 and 71 are the independent claim upon which all remaining claims depend directly or indirectly upon. Applicant respectfully traverses Examiner’s rejections and submits that these claims are allowable over the applied references for at least the following reasons.

Applicant respectfully submits that a prima facie case of obviousness has not been presented since not all three criteria have been satisfied for a showing of obviousness. In the least, the prior art references fail to teach or suggest all of the claimed limitations.

With regard to claims 1 and 69, “both the customer and the payments facilitator each have at least one account with the operator and recorded therewith”. In claim 50, the method comprises “instructing the billing system to credit the amount to be paid to the recipient to an account with the operator and recorded with the billing system, the account being owned by a third party.” Contrary to the Action, MacNamee and Anuszewski do not teach each and every claim limitation as provided in these claims. Applicant respectfully notes, that contrary to Examiner’s contention, MacNamee does not disclose that both the customer and payments facilitator/third party each have an account with the same operator and neither does MacNamee disclose that the payments facilitator/third party *account with the operator is recorded with the same billing system*. Examiner has clearly identified that in MacNamee, there is no teaching of a “payment facilitator” and resorts to Anuszewski as teaching such payment facilitator. However, at most, Anuszewski teaches a “transaction facilitator 340/payment enabler server 330”, but without any further teaching of the recited payment facilitator having at least one account with the same operator of the communications network as the customer and further recorded with the same billing system which is the billing system that provides billing functions to the operator for use of the communications network. Anuszewski rather teaches transfer of money between bank accounts which does not teach the required elements of Applicant’s claims.

Anuszewski discloses debiting a bank account of a buyer into a bank account of the payment enabler and transferring by direct deposit the money into a bank account of the seller. There is in fact no teaching whatsoever that the operator of the communications network holds the accounts of both the customer and the payment facilitator nor is there any teaching or suggesting of crediting a payments facilitator/third party account with the same operator. In fact, Anuszewski deals with the problems associated with such a clearly different system such as the payment enabler’s risk of nonpayment or foreign exchange risk (pg. 8, line 25-27). Such problems are not issues in the claimed invention as the “payment facilitator’s account” is on the same billing system and with the same operator as the customer’s account.

Further, Anuszewski teaches away from the claimed “payment facilitator” having an account with the same operator as the customer, by teaching that its “payment enabler server 330 and transaction facilitator 340” are separately “operated by two different entities”. (pg. 13, lines 19-20). Accordingly, to have two separate entities operating theses components further teach away from an account of a “payment facilitator” being with the same operator as the customer.

Moreover, it is not shown in MacNamee of all the other required limitations of the claims with regard to “payment facilitator” as it has already been admitted that MacNamee does not teach a “payment facilitator”. In particular, contrary to the Action on page 3 and on page 9, MacNamee does not disclose “both the customer and the payment facilitator each having at least one account with the operator and recorded with the billing system”.

Examiner identifies page 26 of MacNamee as teaching such limitations. Applicant has carefully reviewed page 26 and finds no teaching of the required limitation. MacNamee on page 26 merely discusses that a “Payment Server (100)” is “standalone” and that to be convenient a conventional method for users to debit directly from their mobile telephone bill “would be to establish a proprietary communications link between the Payment server (100) and the Mobile Phone Billing System (110)”. Yet, there is no teaching of the payment facilitator having an “account with the operator and recorded with the billing system”. Merely stating that a “communications link” be established does not in any way describe the recited limitation. MacNamee provides no such structure and goes on to disparage its described conventional approach as providing “quite formidable implementation obstacles” (pg. 26).

There is no motivation to combine MacNamee and Anuszewski to arrive at Applicant’s invention, since MacNamee clearly fails to show existence of a payment facilitator with an account on the same operator as the customer and Anuszewski’s payment enabler fails to do the same. The whole point of the cited references is to allow for an outside party to facilitate transactions which are not at all related to the same operator or billing system of the customer and accordingly to combine them would not result in Applicant’s claimed invention but rather change the principle of Applicant’s invention.

With regard to claims 16 and 17, which are both dependent on claims 1 or 6, it has not been shown that their underlying limitations have been provided by MacNamee in view of Anuszewski as described above. In particular, the references in combination fail to show “both the customer and the payment facilitator each having at least one account with the operator and recorded with the billing system” nor do they show “both the customer and the recipient each having at least one account with the operator and recorded with the billing system”. MacNamee, admittedly, shows no “payment facilitator” and neither does the Anuszewski provide for the customer and payment facilitator each having an account with the same operator, nor that the customer and recipient also having an account with the same operator, in both cases recorded with the same billing system.

Similarly with regard to claims 6, 18, 54, 64 and 71, as discussed above, neither MacNamee nor Anuszewski disclose that “both the customer and recipient each having at least one account with the operator”. With regard to claim 18, contrary to what is cited on page 5 and 9 of the Action, where MacNamee is stated to show the elements of the claims on page 3 of MacNamee, Applicant respectfully contends that MacNamee in no manner provides for the limitations of “the payments facilitator...operates to issue an instruction to the billing system in the form of a command **representative of the recipient having made a payment to the operator** equal to the amount to be paid to the recipient.” Page 3 of MacNamee merely discusses Premium Rate numbers and Automatic Vending. There is discussion that a premium call tariff is charged to a caller’s telephone bill. However, there is no teaching anywhere of “the recipient having made a payment to the operator”. This recipient, again, is claimed to have an account with the same operator that the customer has their account with. The scenario of the claims provide for a mobile user to pay the account of another mobile user on the same carrier operator. This is nowhere taught in MacNamee on pages 2-4, as there is only a Vendor/Vending Machine shown. If the Vendor is the “recipient”, there is still no showing that a recipient having an account with the same operator, is shown to have either “made a payment to the operator” on their account with the operator or to “credit the amount ...to the recipient’s at least one account with operator”, the recipient also being a customer of the same operator.

For at least the foregoing reasons, Applicant respectfully submits that claims 1, 6, 50, 54, 69 and 71 are patentable over the combination of MacNamee and Anuszewski. Since the dependent claims include all the limitations of their base claims, the respective dependent claims are believed patentable for at least the same reasons as their independent claims. Accordingly, Applicant respectfully requests withdrawal the rejection of the claims 1, 4-23, 54-62, 67, 69-73, 50-53, 63-66, 74, 80-82 under Section 103(a).

B. REJECTION OF CLAIM 2 UNDER SECTION 103(a)

Claim 2 was rejected under Section 103(a) as being unpatentable over MacNamee in view of Anuszewski and further in view of Kwan. Applicant respectfully traverses Examiner's rejections and submits that these claims are allowable over the applied references for at least the following reasons.

Claim 2 depends from and includes all the limitations of its base claim 1. Claim 1 was discussed above in regard to MacNamee and Anuszewski failing to provide for each and every limitation of claim 1. In particular, MacNamee and Anuszewski in combination fail to show both the customer and payment facilitator each have an account with the same operator, and neither do they show that the payment facilitator account is recorded with the same billing system. The Anuszewski "facilitator" shows money transfer but has not been shown to provide for all the elements of claim 1. Further, Kwan does not provide for the deficiencies of MacNamee and Anuszewski. Kwan teaches user accounts on separate carriers and thereby fails to teach of the payment facilitator and customer accounts being with the same operator and billing system. The three references still do not teach each and every claim limitation of underlying claim 1 and therefore, claim 2 is believed allowable for at least the same reasons as claim 1.

Applicant respectfully submits that claim 2, as dependent on claim 1, is patentable over the combination of MacNamee in view of Anuszewski and further in view of Kwan. Accordingly, Applicant respectfully requests withdrawal of the rejection of claim 2 under Section 103(a).

C. REJECTION OF CLAIM 3 UNDER SECTION 103(a)

Claim 3 was rejected under Section 103(a) as being unpatentable over MacNamee in view of

Anuszewski and Kwan and further in view of Glikman. Applicant respectfully traverses Examiner's rejections and submits that these claims are allowable over the applied references for at least the following reasons.

Claim 3 depends from and includes all the limitations of its base claim 1. Claim 1 was discussed above in regard to MacNamee and Anuszewski failing to provide for each and every limitation of claim 1. In particular, MacNamee and Anuszewski in combination fail to show both the customer and payment facilitator each have an account with the same operator, and neither do they show that the payment facilitator account is recorded with the same billing system. The Anuszewski "facilitator" shows money transfer but has not been shown to provide for all the elements of claim 1. Further, Kwan does not provide for the deficiencies of MacNamee and Anuszewski. Kwan teaches user accounts on separate carriers and thereby fails to teach of the payment facilitator and customer accounts being with the same operator and billing system. Neither is Glikman shown to teach a payment facilitator account with the same operator as the customer. These references in combination still do not teach each and every claim limitation of underlying claim 1 and therefore, claim 3 is believed allowable for at least the same reasons as claim 1.

Applicant respectfully submits that claim 3, as dependent on claim 1, is patentable over the combination of MacNamee in view of Anuszewski and Kwan and further in view of Glikman. Accordingly, Applicant respectfully requests withdrawal of the rejection of claim 3 under Section 103(a).

D. REJECTION OF CLAIMS 24-25, 68, AND 75 UNDER SECTION 103(a)

Claims 24-25, 68, and 75 are rejected under Section 103(a) as being unpatentable over MacNamee in view of Anuszewski and further in view of Glikman and further in view of Official Notice. Applicant respectfully traverses Examiner's rejections and submits that these claims are allowable over the applied references for at least the following reasons.

These rejected claims depend directly or indirectly from independent claims 1, 6, 18, 50, 54, 64 or 71. These claims have been discussed above with regard to MacNamee, Anuszewski and Glikman. The references fail to teach or suggest each and every underlying

limitation of the claims. In particular, the references and Official Notice fail to provide for “both the customer and the payment’s facilitator each have at least one account with the operator and recorded with the billing system...”; “both the customer and recipient each having at least one account with the operator”; “the payment facilitator...operates to issue an instruction to the billing system in the form of a command representative of the recipient having made a payment to the operator equal to the amount to be paid to the recipient” or “to instruct the billing system to credit the specified amount to the recipient’s at least one account”, again the recipient’s account being with the same operator as the customer.

For all the reasons provided above with regard to the independent claims, Applicant respectfully requests withdrawal of the rejection of claims 24-25, 68 and 75 under Section 103(a).

If, for any reason, the Examiner believes that the claims of this application are not yet in full condition for allowance, applicant respectfully requests the Examiner’s constructive assistance and suggestions pursuant to the spirit of MPEP § 2173.02 and § 707.07(j). The Examiner is authorized to make any needed minor corrections or changes.

II. CONCLUSION

The above-discussed remarks are believed to place the present Application in condition for allowance. Should the Examiner have any questions regarding the above amendments, the Examiner is requested to telephone Applicant’s representative at the number listed below.

Respectfully submitted,

Date: June 24, 2009

Atty Docket No.: YSAP.VERITAS.PT1
Contact No.: 408-286-8933



Otto O. Lee (Reg. No.: 37,871)
Juneko Jackson (Reg. No.: 48,870)
Intellectual Property Law Group LLP
Attorneys for Applicant